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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Access Charge Reform )

CC Docket No. 96-262

Price Cap Performance Review )  
for Local Exchange Carriers )

CC Docket No. 94-1

**REPLY COMMENTS OF  
ALLEGIANCE TELECOM, INC.**

Allegiance Telecom, Inc. ("Allegiance") submits these reply comments concerning the revised proposal of the Coalition for Affordable Local and Long Distance Service ("CALLS").<sup>3</sup> Allegiance is a facilities-based competitive local exchange, interexchange, and international carrier that is rapidly expanding its provision of various competitive telephone services, Internet access, and high speed data services to areas throughout the country. Allegiance affiliates are currently providing service in twenty-one markets in the United States. Allegiance Telecom International, Inc. provides international facilities-based and resale services between the United States and other countries.

**I. INTRODUCTION**

The Commission's regulatory framework governing incumbent local exchange carrier ("ILEC") interstate access charges, and universal service regulation, affects all segments of the telecommunications industry and consumers. The bargain struck by the members of CALLS,

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<sup>3</sup> *Coalition for Affordable Local and Long Distance Service Modified Proposal*, Public Notice, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, DA 00-533, released March 8, 2000.

however, excludes the interests and views of CLECs. This proposal would achieve the narrow goals of CALLS participants of preserving ILEC revenues, and reducing charges to IXC's by means of a premature and arbitrary abandonment of key features of price cap regulation that would harm competition and CLECs. Insofar as the Commission is going to rely on industry negotiations to move forward with access reform, the Commission should reject the CALLS proposal and direct CALLS members to negotiate a solution with CLECs that CLECs can support.

## **II. A NEGOTIATED APPROACH TO ACCESS REFORM SHOULD INCLUDE ALL INDUSTRY SEGMENTS**

The Commission has recognized that changes in the access charge and price cap regulatory scheme impacts competitors of ILECs.<sup>4</sup> The Commission is conducting extensive proceedings examining the extent to which the price cap and access charge scheme should be adjusted to reflect competition.<sup>5</sup> The Commission has recognized that premature or inappropriate changes in this regulatory scheme can harm competition.<sup>6</sup> And, the Commission has recognized that the access charge and price cap scheme must be crafted to minimize any

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<sup>4</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, Report and Order*, CC Docket Nos 96-262, 94-1, 12 FCC Rcd 21354, 21428 (1996) ("*Access Reform NPRM*") (stating that ILEC pricing flexibility proposals will affect small entities "especially competitive LECs").

<sup>5</sup> *Id.*; *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, Report and Order*, CC Docket Nos 96-262, 94-1, 14 FCC Rcd 14221 (1999) ("*Pricing Flexibility Order and Further NPRM*")

<sup>6</sup> *Access Reform NPRM, supra.*

incorrect economic signals to price cap ILECs, their customers, and their competitors.<sup>7</sup> In short, the price cap and access charge scheme governing price cap ILECs profoundly affects the entire industry, including CLECs.

It is a striking feature of the CALLS proposal, however, that it has been crafted based on an exclusive negotiation between some price cap ILECs and some IXCs. These carriers would significantly amend key price cap, access charge, and universal service rules without even attempting to address the competitive issues that their proposal involves. For example, the flexibility that the CALLS proposal would provide to ILECs in terms of application of X Factor reductions anywhere in traffic sensitive baskets would provide ILECs a new tool to price services that could dramatically affect CLECs. And yet the CALLS proposal makes no attempt to justify this feature of the proposal. As explained below, Allegiance fully supports comments contending that this aspect of the plan is arbitrary, anticompetitive, and unlawful.

Allegiance urgently requests that the Commission not proceed further with the CALLS proposal based on the one-sided approach from which this proposal has originated. Assuming the Commission does not reject the CALLS proposal outright, it should send CALLS participants back to the drawing board with instructions to negotiate a solution that CLECs can also support. Allegiance submits that insofar as the Commission is going to move forward with access reform on the basis of this quasi-negotiated rulemaking approach, it is appropriate that the

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<sup>7</sup> *Access Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94-1, Further Notice of Proposed Rulemaking, FCC 99-345, released November 15, 1999, para 14 ("*X Factor Remand NPRM*").

Commission assure that all industry groups are included.<sup>8</sup> Consumer groups should be included also.

In fact, CLECs could bring a great deal to the table. Allegiance submits that inclusion of CLECs in CALLS negotiations would complete the triangle of affected interests - IXC's want to reduce interstate access charges of all LECs, ILEC's want to price to meet competition from CLECs, and CLECs want and expect their tariffed interstate access charges to be paid, want calls to and from their customers completed, and are vitally concerned about the competitive impact of ILEC pricing decisions. Inclusion of CLECs in these negotiations would permit a "global settlement" of important issues that are now crowding on the Commission's agenda. Some states have conducted global settlement proceedings and the Commission should do so here in so far as it is going to rely on industry negotiations as the vehicle for resolving key regulatory issues.<sup>9</sup> And it would better assure an equitable result to include all affected industry segments.

Allegiance has attempted to implement this approach. Allegiance has offered as a starting point for negotiations to voluntarily cap its interstate access charges at NECA rates if

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<sup>8</sup> As recently observed about CALLS negotiations heretofore, "I cannot escape the conclusion that the process by which this Notice has been promulgated falls short of certain fundamental principles that govern the behavior of administrative agencies." *1998 Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, Further Notice of Proposed Rulemaking, CC Docket No. 98-137, FCC 00-119, released April 3, 2000, separate statement of Commissioner Furchgott-Roth.

<sup>9</sup> Opinion and Order, *Joint Petition of Senators Fumo, Madigan and White, Pennsylvania Cable & Telecommunications Association, and Seven Competitive Local Exchange Carriers for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Docket No. P-00991648, and *Joint Petition of Bell Atlantic-Pennsylvania, Conectiv Communications, Inc., Network Access Solutions, and Rural Telephone Company Coalition for Resolution of Global Telecommunications Proceedings*, Docket No. P-00991649 (September 30, 1999)

IXCs will pay them and stop refusing to complete calls. CALLS members have not embraced this offer. Allegiance submits that ILECs do not want to negotiate with CLECs because they are hoping that the Commission will buy off on their proposal to give them dramatic new freedom from price cap constraints that can be used to harm competition.

Allegiance is alarmed by the indifference reflected in the CALLS proposal to the sweeping competitive advantages that this proposal would confer on ILECs and the harm that it would cause to CLECs. As stated, the Commission should cure this defect by sending CALLS members back to the negotiating table with an invitation to return to the Commission only after crafting a proposal in which CLECs can join in supporting.

## **II. THE CALLS PROPOSAL IS ANTICOMPETITIVE, ARBITRARY, AND UNLAWFUL**

Allegiance agrees with the commenters who characterize the CALLS proposal as anticompetitive, arbitrary, and unlawful.<sup>10</sup> CALLS would convert the X Factor from a heretofore carefully designed and applied measure of ILEC productivity into a tool to harm competition. Instead of applying X Factor reductions across-the-board to price cap baskets, which is consistent with the X Factor as a measure of ILEC productivity as a whole, not individual baskets or services, CALLS would permit ILECs to use X Factor reductions to fund rate reductions in competitively sensitive areas. Competitive carriers do not have the ability to shift revenue recovery to less competitive areas because - almost by definition - they do not enjoy the advantages of incumbency and only offer fully competitive services. Thus, the CALLS proposal would give ILECs an enormous competitive advantage. This is aggravated by the fact that

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<sup>10</sup> Focal p. 2.

CALLS ILECs would apparently give themselves the unfettered discretion to apply X Factor reductions anywhere within traffic sensitive baskets.

As pointed out in initial comments, however, this proposal is completely arbitrary. The Commission may not permit ILECs to apply X Factor reductions to particular baskets and services absent a record that this would reflect a reasonable estimate of the productivity of those baskets or services in comparison to the economy as a whole.<sup>11</sup> However, there is no such record support for basket- or service-specific X Factors. The CALLS proposal is remarkable in that it merely describes its proposed crazy pattern of X Factor reductions scattered across price caps without any attempt to explain or provide a rational basis for it. It is also noteworthy that the proposed X Factor changes would actually result in increased ILEC revenue in contrast to current rules governing application of the X Factor. NASUCA has submitted a chart that quite graphically shows ILEC revenues going through the roof because of the proposed X Factor changes.<sup>12</sup> CALLS has not attempted to justify this startling revenue increase. Accordingly, it would be unlawful for the Commission to adopt the highly discretionary and unsupported X Factor targeting proposed by CALLS.

The CALLs proposed universal service fund is also arbitrary. Simply stated, the magnitude of the proposed \$650 million fund is drawn from thin air and reflects no more than ILECs' desire to immunize as much revenue as possible from competition by shifting as much revenue as possible from access charges to a new guaranteed recovery mechanism. Even US

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<sup>11</sup> Focal p. 4; ALTS/Time Warner pp. 8-10.

<sup>12</sup> NASUCA Attachment 1.

West views this fund as arbitrary.<sup>13</sup> In addition, the proposed universal service fund is the other half of the anticompetitive core of the CALLS proposal -- X factor reductions are targeted to competitively sensitive services while revenues protected from X Factor reductions are insulated from competition and preserved in a new universal service fund. The portability of this proposed fund does not alter its anticompetitive affect because, as a practical matter, ILECs will receive the overwhelming share of this fund for the foreseeable future. The Commission may not lawfully adopt this unsupported and anticompetitive proposed fund on the current record. If the Commission wants to establish a universal service fund to recover implicit support it needs more than thin air to support it and must establish a fund that is not part of a package designed to harm competition.

### **III. THE ALTS/TIME WARNER PROPOSAL WOULD BE A AN IMPROVEMENT**

The ALTS/Time Warner proposal would constitute a great improvement over the CALLS proposal. ALTS/Time Warner correctly identifies the numerous highly problematic features of the CALLS proposal. The CALLS proposal is a negotiated deal that reflects the specific interests of the negotiating parties that cannot withstand independent regulatory review.<sup>14</sup> It would prematurely abandon reliance on competition to remove implicit universal support from

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<sup>13</sup> US West p. 4.

<sup>14</sup> ALTS/Time Warner at 2.

interstate access charges.<sup>15</sup> The CALLS proposal would discourage facilities-based competitive entry.<sup>16</sup> And, there is no basis for the proposed X Factor targeting.<sup>17</sup>

In contrast, the ALTS/Time Warner would substantially moderate the problematic features of the CALLS proposal. For example, the ALTS/Time Warner proposal would spread X Factor reductions across common line and traffic sensitive baskets 50/50. This would blunt and circumscribe to some extent price cap ILECs' ability to misuse the X Factor as a tool to price traffic sensitive services anticompetitively. Since this anticompetitive and premature pricing flexibility is the heart of the attractiveness of the CALLS proposal to ILECs, and is what constitutes the greatest threat to CLECs and to competition, the ALTS/Time Warner proposal would help address this problematic feature of the CALLS proposal. The ALTS/Time Warner approach would also improve upon the CALLS plan by establishing a smaller new universal service fund.

Accordingly, if the Commission does not reject the CALLS proposal and send CALLS members back to the negotiating table with instructions to include CLECs, the Commission should adopt the ALTS/Time Warner proposal in preference to the CALLS plan.

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<sup>15</sup> *Id.* p. 3.

<sup>16</sup> *Id.* p. 3.

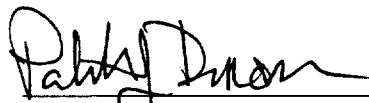
<sup>17</sup> *Id.* p. 3.



#### IV. CONCLUSION

For these reasons, Allegiance requests that the Commission reject the CALLS proposal and direct CALLS members to include CLECs in future negotiations. If the Commission does not take this step, it should adopt the ALTS/Time Warner proposal.

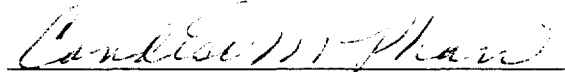
Robert W. McCausland  
Vice President - Regulatory and Interconnection  
Mary Albert  
Regulatory Counsel  
Allegiance Telecom, Inc.  
1950 Stemmons Freeway, Suite 3026  
Dallas, Texas 75207-3118  
(214) 261-8730

  
\_\_\_\_\_  
Russell M. Blau  
Patrick J. Donovan  
Swidler Berlin Shereff Friedman LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
(202) 424-7500  
  
Counsel for Allegiance  
Telecom, Inc.

Dated: April 17, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments of Allegiance Telecom, Inc. in CC Docket No. 96-262 was sent by hand delivery, on this 17<sup>th</sup> day of April, 2000 to the parties on the attached list.



Candise M. Pharr

**VIA HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - TW-B204  
Washington, DC 20554

**VIA HAND DELIVERY**

Sarah Whitesell  
Office of Commissioner Tristani  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

Dorothy Atwood  
Office of the Chairman  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

Jordan Goldstein  
Office of Commissioner Ness  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

International Transcription Service  
445 12<sup>th</sup> Street, SW - CY-B400  
Washington, DC 20554

**VIA HAND DELIVERY**

Rebecca Beynon  
Office of Commissioner Furchgott-Roth  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

Lawrence E. Strickling  
Chief, Common Carrier Bureau  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

Wanda Harris (3)  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Kyle Dixon  
Office of Commissioner Powell  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**VIA HAND DELIVERY**

Jane Jackson  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Richard Lerner  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Tamara Priess  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Aaron Goldschmidt  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Yog Varma  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

Christopher Wright  
General Counsel  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 8<sup>th</sup> Floor  
Washington, DC 20554

**VIA HAND DELIVERY**

John Nakahata  
Karen Gulick  
Evan R. Grayer  
Harris Wiltshire & Grannis, LLP  
1200 18<sup>th</sup> Street, N.W.  
Washington, DC 20036

**VIA HAND DELIVERY**

Jay Atkinson  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, SW - 5<sup>th</sup> Floor  
Washington, DC 20554